

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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In the Matter of

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Release of Customer Information

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During 9-1-1 Emergencies

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RM-_____

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR RULEMAKING

The National Emergency Number Association ("NENA"), the Association of Public-Safety Communications Officials-International, Inc. ("APCO") and the National Association of State Nine One One Administrators ("NASNA") hereby request the Commission to solicit public comment, pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. §553, and Section 1.401 of the Rules, on the legal preconditions to release of customer-specific information to Public Safety Answering Points ("PSAPs") in the course of response to 9-1-1 emergency calls.¹ Relevant federal statutes are Section 222 of the Communications Act and portions of the criminal code amended by the USA PATRIOT and Homeland Security Acts.²

In general, a wire or wireless caller's expectations of privacy are diminished when 9-1-1 is dialed. As the Department of Justice advised in an opinion requested by the FCC:

Calling 911 and triggering the government's emergency response invalidates any claim by a caller that he does not in fact consent to the disclosure of information regarding his location. If he chooses to seek such emergency aid, he implicitly consents both to aiding the

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¹ We believe the views of wire and wireless carriers and privacy advocates, among others, would be important to a process of rulemaking. In the alternative, we ask the FCC to consider a declaratory ruling to remove uncertainty, pursuant to Section 5(d) of the APA, 5 U.S.C. §553(e), and Section 1.2 of the Commission's Rules.

² Respectively, P.L. 107-56 and P.L. 107-296. Other federal statutes, as well as state laws, may also apply, and could be expected to emerge in public comment.

authorities in this limited way and to action taken by the government to verify his call.³

Explicit 9-1-1-related exemptions from telephone privacy protections are found in both the Communications Act and the U.S. criminal code.

The Communications Act. Section 222 of the Act generally protects the confidentiality of “customer proprietary network information” (“CPNI”), defined in re-designated subsection (h) as “information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier . . .”

Since the customer’s location ordinarily would be treated confidentially, an exception must be made for emergency calls from commercial mobile service users. Call location information may be released:

- (A) to a public safety answering point, emergency medical service provider or emergency dispatch provider, public safety, fire service, or law enforcement official, or hospital emergency or trauma care facility, in order to respond to the user’s call for emergency services;
- (B) to inform the user’s legal guardian or members of the user’s immediate family of the user’s location in an emergency situation that involves the risk of death or serious physical harm; or
- (C) to providers of information or database management services solely for purposes of assisting in the delivery of emergency services in response to an emergency.

New Section 222(f) provides that a customer shall not be considered to have approved disclosure of or access to call location information except “in accordance with” (A), (B) or (C)

³ Memorandum Opinion to Criminal Division from Office of Legal Counsel, Department of Justice, September 10, 1996, page 6, n. 13, citations omitted. The document is posted on the FCC’s Electronic Comment Filing System under date of 12/13/1996, CC Docket 94-102. In due course, the opinion was made available to the FCC and used in deciding issues of wireless carrier liability. Memorandum Opinion and Order, 12 FCC Rcd 22665 (1997), ¶131.

above. Similarly, disclosure of automatic crash notification (“ACN”) information is not considered approved “other than for use in the operation of an automatic crash notification system.”

New Section 222(g) requires carriers providing telephone exchange service to release subscriber listed and unlisted information on a timely and unbundled basis, under reasonable and nondiscriminatory terms, to providers of emergency services and providers of emergency support services, solely for purposes of delivering or assisting in the delivery of emergency services.

Re-designated Section 222(h) – formerly (f) – adds definitions of Public Safety Answering Point, Emergency Services, Emergency Notification Services and Emergency Support Services. These definitions are important to the understanding of permissible call location disclosure under Section 222(d)(4)(A), (B) and (C) and Section 222(g).⁴

U.S. Criminal Code. The Department of Justice found no impediment to 9-1-1 wireless caller location disclosure in the Communications Assistance for Law Enforcement Act of 1994 (“CALEA”) or the Electronic Communications Privacy Act of 1986 (“ECPA”).⁵ (Note 3, *supra*, at 3-7) However, an amendment to ECPA by the Homeland Security Act of 2002 (note 2, *supra*) added the following to the “exceptions for disclosure of communications” at 18 U.S.C. §2702(b):

(7) to a governmental entity, if the provider reasonably believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.

A similar provision added in the USA Patriot Act of 2001 is found at 18 U.S.C. §2702(c)(4), relating to customer “records” rather than “communications:”

⁴ These 9-1-1-related amendments to Section 222 were enacted in the Wireless Communications and Public Safety Act of 1999, P.L.106-81, which also designated 9-1-1 as the universal emergency telephone number in the United States.

⁵ Respectively, P.L.103-414 (1994) and P.L. 99-508 (1986).

to a governmental entity if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information.

The use of this language by carriers is discussed further below.

The new language, of course, did not exist when the Justice Department advised the FCC on wireless caller location in 1996. Of chief importance to the Department's opinion was the caller consent provision of 18 U.S.C. §2703(c):

(1) A governmental entity may require a provider of electronic communication service . . . to disclose a record or other information pertaining to a subscriber or customer of such service (not including the contents of communications) only when the governmental entity --

* * *

(C) has the consent of the subscriber or customer to such disclosure.⁶

It is worth marking for discussion below that Section 2703 allows the government to "require" disclosure while Section 2702 states only that a provider, in the exceptional case, "may divulge" the information.

Carrier Disclosure Policies.

Two of the three wireless carriers that have provided to NENA their written policies on disclosure of subscriber-specific information to 9-1-1 authorities appear to have adopted the language of 18 U.S.C. §2702(b) and (c).⁷ Sprint PCS uses the phrase "where someone's life is in

⁶ Although Section 2703 of the Code, along with Section 2702, was revised extensively in 2001 and 2002, the substance of the consent provision remained as it stood at the time of the Department's opinion in 1996.

⁷ We requested the written policies of all six national wireless carriers, but have not heard from Cingular, Nextel or Verizon Wireless. While the pertinent statutes read on wire carriers as well, we felt that the national wireless sample would be sufficient for comparison at this time.

immediate danger.”⁸ AT&T Wireless’ “911 Exigent Circumstances Form” specifies “immediate danger of death or serious physical injury.”⁹ The T-Mobile policy (Attachment 3) contains no such limiting language.

One dilemma created by these variations in language -- for 9-1-1 authorities and telephone carriers alike -- is the frequency with which emergency calls relate to endangered property rather than endangered lives. For example, reports of fire or apparent burglary often present no threat to life but they surely describe property at risk. To the 9-1-1 calltaker, saving property remains highly important even if lower in priority than saving lives. It makes little sense to differentiate the disclosure of customer information based on whether property or lives may be at risk.

An Illustration of the Problem.

Exhibit A recounts an incident in which the caller to 9-1-1 was not the person to be located as in need of help. This was significant to the wireless carrier, which provided the following explanation of its reluctance to disclose the requested information:

The situation raised by _____ County is different, however. Section 222(d)(4)(A) permits the disclosure of "location information concerning the user" only "in order to respond to the user's call for emergency services." Further, Section 2702(c)(4) only permits disclosure when the "provider reasonably believes" that a life-threatening emergency "justifies disclosure." A call by our customer to 911 or other emergency number provides some objective basis to believe that our customer may be in a life-threatening emergency.

According to the e-mail below, the _____ County situation did not involve a call by our customer to 911 or, for that matter, a call to anyone.

⁸ Attachment 1, paragraph 2.0, “Emergency Hotline.” It is not clear whether the “Emergency 911 Request Form” referenced at paragraph 2.1 can only be used in life-threatening situations. No such restriction is found on the face of the form.

⁹ Attachment 2. However, the phrase does not appear in the descriptive cover material.

In fact, our customer was not even the person who needed emergency services, but (if I followed this correctly) was the boyfriend of the woman who was attempting suicide, whose friend called her mother, who in turn called 911.¹⁰

This is a useful example of the need for rulemaking or some other clarification of the relevant statutes.

Although the Section 222(d) exceptions to customer privacy seem to apply only when the “user” of a commercial mobile radio service is the person to be located as in need of help, there is no such limitation in the counterpart language of the criminal statutes at 18 U.S.C. §2702(b) and (c). Indeed, the latter is more realistic in allowing for the frequency with which 9-1-1 calls are placed by individuals other than those in trouble. Often, victims are unable to dial for help. Instead, aid is summoned by persons acting on their behalf or by “Good Samaritans.” Absent a clear showing of Congressional intent, we believe it would be unfortunate to limit Section 222(d) disclosure to cases when the caller and the endangered person are one and the same.

On the other hand, the restriction of the criminal law 9-1-1 disclosure exemption to situations involving “immediate danger of death or serious physical injury” -- a limitation not found in the civil law at Section 222 -- seems unwarranted in light of the Justice Department’s interpretation of the pre-existing statute, 18 U.S.C. §2703(c), finding “implied consent” on the part of any caller to 9-1-1 independent of the degree of hazard.¹¹

¹⁰ Emphasis added. This was the response of a lawyer for the carrier to an e-mail from NENA asking about the matter described in Exhibit A. The identities of the local 9-1-1 authority and the wireless carrier are not, we believe, crucial to the discussion, but can be supplied later with their permission.

¹¹ Assuming consent may only be given or implied when the endangered person is the caller, or when that person has authorized another to call, this would bring the criminal law more closely into line with the “user” terminology in Section 222(d). Similarly, interpreting Section 2703 to cover perils other than immediate danger of death or serious physical injury would help to align the criminal statutes with the civil law reflected in the Communications Act.

If Section 2703 controls Section 2702, the likelihood of death or serious physical injury should not be a factor in deciding disclosure where consent of the victim is given or reasonably may be implied. The release forms used by carriers for PSAP disclosure requests should be changed accordingly, and carrier employees should be instructed in their proper use.

Alternatively, if the changes to Section 2702 made in 2001 and 2002 were meant to limit the earlier interpretation of Section 2703, that construction should be developed on a reviewable record. On this outcome also turns the question of "may disclose" (Section 2702) versus "must disclose" (Section 2703).

On information and belief, based on e-mails circulated to a NENA listserv, the account in Exhibit A is typical of numerous cases in which carriers have declined to disclose -- in the absence of court orders or similar mandates -- subscriber-specific information about callers to 9-1-1 or that might aid in resolving 9-1-1 emergencies. A notice of proposed rulemaking or a proposed interpretation of the relevant statutes would, we believe, document the nature and frequency of these refusals and illuminate the need for a common practice in the public interest.

It is trite but true that "seconds count" in responding to 9-1-1 emergencies. In situations where calls are broken off and calltakers need to secure customer information from carriers to proceed with rescue, the seconds may extend into minutes, but minutes count, too, in situations such as kidnappings. Emergency calltakers and responders strive constantly to meet the timing standards of National Fire Protection Association ("NFPA") section 1710.¹² The necessary

¹² NFPA requires that 9-1-1 calls be answered within 60 seconds from the time of the initial ring 90% of the time. An additional 60 seconds (120 seconds total) is allowed for the handling of the emergency telephone call 90% of the time. Section 3.1.42.3 of NFPA 1710 defines "Dispatch Time" from the point of receipt of the emergency alarm at the public safety answering point to the point where sufficient information is known to the dispatcher and applicable units are notified of the emergency.

premium on speed means that we should cut to a minimum disputes over when to release customer-specific information in aid of emergency assistance.

Unlisted Numbers

Section 222(d) and its criminal law counterparts are not the only sources of 9-1-1 information disclosure disputes. Section 222(g) applies, as noted above, to unlisted numbers whose records most often are in the control of local exchange carriers.¹³ From time to time, LECs have questioned the instruction to turn over data bases, including unlisted numbers, to providers of emergency services and of “emergency support services.” The latter are broadly defined as “information or data base management services used in support of emergency services.” Section 222(h)(7).

It is the breadth of the definition that seems to trouble LECs most. While the disclosure is to be used “solely for purposes of delivering or assisting in the delivery of emergency services,” some LECs worry about the potential for ignoring or enlarging the permitted use to exploit commercial opportunities. The risk of such abuse is not, we tentatively conclude, a basis for shading the disclosure requirements of the statute. If LECs need to protect themselves, they should do so by contract rather than by refusal to disclose to an eligible recipient.

Clarifying Questions.

Among the questions to which NENA, APCO and NASNA seek answers by rulemaking or interpretation are:

- Does the term “user” in Section 222(d)(4) limit the disclosure of location information in 9-1-1 emergencies?

¹³ As in the difference between Sections 2702 and 2703 of the criminal code, discussed above, so in Section 222 there is a distinction between “nothing prohibits” -- a seemingly permissive disclosure under (d) -- and the mandatory “shall provide” in (g).

- Did Congress intend disclosures under Section 222(d) to be discretionary while those under (g) are mandatory?
- Does the “implied consent” interpretation of 18 U.S.C. §2703(c) overcome the limitations of “immediate danger of death or serious physical injury” in Section 2702(b) and (c)?
- How can the differences in the civil and criminal statutes best be reconciled?
- To the extent the laws cannot be reconciled, what should Congress be asked to do?

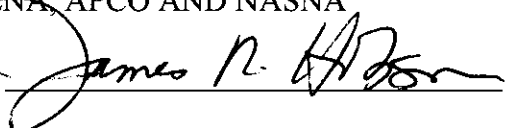
CONCLUSION

For the reasons discussed above, the Commission should open a rulemaking or issue a declaratory order as to compliance with the relevant statutory provisions on disclosure of information in 9-1-1 emergencies.

Respectfully submitted,

NENA, APCO AND NASNA

By


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May 2, 2003



1.0 Introduction

The goal of Sprint Corporate Security's Electronic Surveillance Group is to comply with the laws governing access to private information entrusted to Sprint PCS by its customers. The Electronic Surveillance Group also understands the importance of assisting law enforcement during emergency situations. This manual clarifies issues surrounding 911 emergencies and exigent circumstances as they pertain to Sprint PCS and its policies.

2.0 Emergency Hotline

The Emergency Hotline was established by Sprint to assist Law Enforcement in exigent situations such as kidnappings, hostage situations, suicide attempts, 911 emergencies, etc. where someone's life is in **immediate** danger. It can also be used for exigent-life or death conspiratorial activities that threaten national security, or involve organized crime. The hotline is answered 24 hours a day, seven days a week. The hotline number is **888-XXX-XXXX Option 1**. All 911 request forms should be faxed to 913-XXX-XXXX.

2.1 Emergency 911 Request Form

This form is used by 911 operators (PSAP's) to identify Sprint PCS customers who call for emergency assistance. A sample of this form is located on the next page. This is only a sample and cannot be used in future requests. At the request of a PSAP, a true copy will be faxed by an Electronic Surveillance Analyst. Although this true form can be copied by law enforcement personnel, a call to the Emergency Hotline **must** be made prior to faxing in the completed form.

3.0 Information Available

Upon receipt of the 911 request form from the PSAP, Sprint Corporate Security can release Sprint PCS subscriber name, address and home phone number. In certain situations, Sprint can release cell site location information used during the particular 911 call. Call detail information is not available for 911 inquiries. If further tracking of the phone is requested a legal demand (*e.g., a subpoena*) would be required.

3.1 Unprovisioned Handsets

Many calls to 911 are made with unprovisioned handsets. In those cases, Sprint can only provide the last known subscriber, if available.



Sprint PCS

Sprint Corporate Security

KSOPHM0206

6480 Sprint Parkway

Overland Park, KS 66251

EMERGENCY CONTACT NUMBER: 1-888-XXX-XXXX

Attention: _____

WIRELESS 9-1-1 EMERGENCY INFORMATION REQUEST FORM

1) CONTACT SPRINT PCS: 1-888-XXX-XXXX

2) FAX COMPLETED EMERGENCY REQUEST FORM TO: 913-XXX-XXXX

AGENCY REQUESTING INFORMATION:

AGENCY ADDRESS (Street): _____

AGENCY ADDRESS (City, State, Zip Code): _____

AGENCY FAX #: _____

AGENCY PHONE #: _____

EMPLOYEE REQUESTING INFORMATION:

EMPLOYEE TITLE: _____ BADGE #: _____

EMPLOYEE SIGNATURE: _____ DATE: _____

RE: Emergency Request for Information on Sprint PCS Wireless Number:

This agency received a 9-1-1 emergency call for assistance from the above Sprint PCS telephone number:

Date of Call: _____ Time of Call: _____ a.m./p.m.

Dispatch Log #: _____

Nature of call: _____

Based on that telephone call, we believe a situation exists that requires emergency assistance from Sprint PCS. We request that you promptly provide the following information necessary to initiate the appropriate response.

____ subscriber name, billing address, home/business phone numbers for the above Sprint PCS telephone number

____ Cell site or location information for the 9-1-1 call from this Sprint PCS phone number

National Subpoena Compliance Center

Our Mission

The AT&T Wireless (AW) National Subpoena and Court Order Compliance Center (NSCC) is a team of specialized, wireless subpoena and court order compliance professionals focused on providing law enforcement, officers of the court, Public Safety Answering Points and other legal contacts with the best possible customer service in the wireless industry. The NSCC is located in West Palm Beach, Florida and currently responds to all AWS subpoena, search warrant and court ordered requests nationwide for customer records. The goal of this team is to comply with civil and criminal process and provide assistance to federal, state and local law enforcement agencies, attorneys, and customers pursuant to that process. At the same time, the team must ensure that they adhere to all applicable state and federal laws and that they protect the privacy of AW's customers.

Responsibilities

- Providing information pursuant to all lawful requests
- Providing technical assistance in the conduct of Lawfully Authorized Electronic Surveillances;
- Providing expert testimony
- Ensuring company technical and procedural compliance to federal Communications Assistance to Law Enforcement Act (CALEA) requirements.
- Providing education and support to law enforcement regarding AW's policies and procedures for legal process.

Business Hours

Regular Business Hours: 8:30 a.m.–8:00 p.m. EST Monday thru Friday

Open 24 hours per day, 7 days per week for emergency and exigent circumstances

Contact Numbers

Main Phone: (800) 635-6840

Subpoena Information: Option 1

Court Order Information: Option 2

Facsimile: (888) 938-4715

911 Emergencies

During an emergency, the NSCC will provide a subscriber's name, telephone number and location to any Public Safety Answering Point (PSAP or 911 Emergency Dispatcher). The NSCC requires that PSAPs provide a completed 911 Emergency Services Exigent Circumstances Form (attached) with the request. In certain emergency situations, where taking the time to complete the form before receiving the information could result in death or serious injury, the form may be faxed immediately after resolution of the emergency. The Exigent Circumstances form should be forwarded to (888) 938-4715 during regular business hours, 8:30 AM to 8:00 PM Monday thru Friday and to (561) 640-1216 after hours. Please call the NSCC's 800 number once the form is faxed to receive the requested information.

911 EXIGENT CIRCUMSTANCES FORM

To: AT&T Wireless Services, National Subpoena Compliance Center

(Phone 800-635-6840; Fax 888-938-4715)

From: _____
(Name of Agency/PSAP)

Re: Emergency Request for Records for Wireless Number: _____ - _____ - _____

This office received a 911 distress call for assistance from the above AT&T Wireless telephone number on _____ 200__ at _____ a.m./p.m. Based upon that phone call, we believe that one or more people face immediate danger of death or serious physical injury. As such, we request that you promptly provide us with the following information so that we may render assistance to that individual (or individuals):

_____ current subscriber name and billing address information for the above-referenced telephone;

and/or

_____ cell site or location information for the call placed by the above-referenced telephone to 911.

Signature: _____

Printed Name: _____

Title: _____

Address 1 _____

Address 2 _____

City, State, Zip _____

Contact Number: _____

Contact Facsimile: _____

Date: _____



Law Enforcement Relations

Role

The T-Mobile USA, Inc. Law Enforcement Relations Group (LERG) is committed to efficiently assisting the law enforcement community with all lawfully authorized activities. Our Law Enforcement Relations unit is staffed by personnel who are well acquainted with the technical and evidentiary needs of federal, state, and local prosecutors and investigative officers. The unit maintains their proactive philosophy by offering educational presentations, reference materials and expedient, secure procedures that support the mission of the public safety community in an unparalleled fashion. Responsibilities of the LER Group include the following:

Responsibilities

- Processing lawful requests for subscriber identification information and historical billing data
- Providing technical assistance in the conduct of Lawfully Authorized Electronic Surveillance
- Providing expert testimony
- Ensuring company technical and procedural compliance to federal Communications Assistance to Law Enforcement Act requirements.
- Providing education to law enforcement regarding T-Mobile's GSM technology

Contact List

Central and Eastern Time Zones	Main Phone: (973) 292-8911 Fax: (973) 292-8697 Emergency Pager: (973) 292-8911 will be connected to a pager service after normal business hours.	Business Hours: 8:30-5:30 ET
Mountain and Pacific Time Zones	Main Phones: (425) 378-6059 (425) 378-6061 Fax: (425) 378-6050 Emergency Pager: (206) 663-7927	Business Hours: 7:00-4:00 PT

Law Enforcement Relations Director

Mike McAdoo (973) 292-8903 - Office
(201) 757-2626 - PCS

LER Group
4 Sylvan Way
Parsippany, NJ 07054

9-1-1 Emergencies:

During an emergency, Law Enforcement Relations Group (LERG) will attempt to verify the caller's identity as a legitimate representative of the Public Safety Answering Point (PSAP or 911 Emergency Dispatcher). LERG will ask that the PSAP fax a demand letter requesting subscriber information as soon as possible. LERG prefers to receive demand letters prior to the release of information to the PSAP, but in ongoing emergency situations, the letter may be faxed after the emergency has been resolved. Demand letters should be forwarded to (973) 292-8697 for the Eastern and Central time zones, and to (425) 378-6050 for the Mountain and Pacific time zones.

EXHIBIT A

From a Communications Manager in a southern California Sheriff's Office:

In late October of 2002, one of our call-takers received a telephone call from a woman who was reporting that she had received a call from her daughter's friend. The friend stated that the woman's daughter was attempting suicide by overdosing on a med. Neither the mother calling 9-1-1 nor the informant knew where the daughter was, but thought she was probably at her boyfriend's home. Unfortunately, they didn't know the boyfriend's last name or his address. But they did have his cell number. Our shift supervisor contacted Pac Bell, which referred her to Verizon, which referred her to [Carrier X]. Carrier X stated that they had the subscriber information, but they would not release it because company policy requires a subpoena or court order to release the information.

After much discussion and repeated emphasis from the dispatch supervisor that this qualified as an exigent circumstance, Carrier X reluctantly agreed to provide the information. The company insisted, as a condition of the release, that we provide them with a written promise that we would send them a subpoena or court order within 48 hours. The shift supervisor provided them with the written promise and they provided us with the subscriber information. Eventually, the daughter was located and was found to be okay.

Now I have Carrier X hounding me for a court order or subpoena. Interestingly, according to county counsel, the section cited by Carrier X, 18 U.S.C. 2702 (c), "allows" the information to be released by the telco if there is a life threatening emergency, but it apparently does not compel them to release this information. Any information that anyone can share would be greatly appreciated.